(1)

90-452

Supreme Court, U.S.
FILED
AUG 28
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

EMMA M. L. CONTI, Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, et al.,
Respondents
U.S. TAX COURT No. 21375-85

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

EMMA M.L. CONTI, Pro Se

107 East Moreland Avenue
Philadelphia, Pa. 19118
(215) 247-4235

Counsel for Petitioner-
Pro Se

37 DUP pgs

QUESTIONS PRESENTED

1. Violation of taxpayers constitutional rights to due process by willfully and maliciously assessing them for taxes they do not owe and harrassing them into paying those taxes.

2. The Fourteenth Amendment designed to prevent abuses by state government or any government, to individuals. Nor shall any state or government deprive any person of life, liberty or property without due process of law, nor deny to any person the equal protection of the laws.

How is one protected by the law? What is the purpose of law, if there is no one to enforce it ?

3. The Right to Counsel- the right to be represented by Counsel of integrity affects ones ability to assert other rights. Your Petitioner is requesting the Court to assign counsel to represent me. It is not only the poor who need protection. A corrupt Counsel

is worse than no counsel .

5. Legal ethics- the lack of them and the failure of the Legal Profession (Bar Association) to go after them and protect the public and honest lawyers,who would be punished if they expose unethical practices.

6. Whether government agencies should be permitted to use counsel to protect unethical and criminal activities of their employees,instead of punishing them for crimes.

7. Whether it is the Judge using the fifth amendment , when he fails to support his decision (Judgement) with an opinion and determination; reasons that appeal to the intellect or law. For to give no reason at all, avoids all responsibility and is unfair to the appellant.

8. Why are agencies that are supposed to be investigating and punishing terrorism and wrong doings, are instead protecting them-as IRS, Regional Inspector-

PARTIES TO THE PROCEEDINGS

Petitioner, Emma M.L. Conti, daughter of Marion J. Conti , deceased January 12,1981 Decedent had a self-proved Will- naming Emma M.L. Conti and son Elmer J. Conti, co-Executors. Petitioners are seeking a review of account and protection of Counsel.

Respondent- Commissioner of Internal Revenue, et al U.S. Tax CourtNo, 21375-85 Counsel for respondents are

Ms. Doris D. Coles, Esq.
Ms. Ann B. Durney, Esq.
Mr. Gary R. Allen, Esq.
Chief, Appellate Section
U.S. Dept. of Justice, Tax Div.

P.O. Box 502
Washington, D.C. 20044

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i-ii
PARTIES TO THE PROCEEDINGS.....	iii
TABLE OF AUTHORITIES.....	v-vi
OPINIONS BELOW.....	2
JURISDICTION.....	3
PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS.....	4-5
STATEMENT OF THE CASE.....	6-7-8
REASONS FOR GRANTING THE WRIT...	9-10-11
CONCLUSION.....	11

TABLE OF AUTHORITIES

Cases Page

D. R. Rutherford and L.D. Rutherford V. U.S. of A., District Director of the Internal Revenue Service - No. 81-1548, U.S. Court of Appeals for the Fifth Circuit- 702 F.2d 580 -April 11, 1983....9

As, Petitioner is Pro Se, she did not have opportunity to investigate additional cases.

U.S. CONSTITUTIONAL PROVISIONS

Article VI, 2nd & 3rd Para., U.S.Constitution 4

Amendment 1 ; U.S. Constitution.....4

Amendment V : U.S. Constitution.....4

Amendment VI : U.S.Constitution.....4

Amendment XIV : U.S.Constitution.....5

Civil Rights-Protection provision -U.S. Constitution-"Equal protection of the law."

Federal Tort Claims Act- 1946 .....

Racketeer-Influenced and Corrupt Organization Act-1970 .....

TABLE OF AUTHORITIES-(Continued)

DEPARTMENT of the Treasury Page

Internal Revenue Service- Instructions for Form 706-U.S.Estate Tax Return.....10

I.R.S. Income Tax Appeal Procedure U.S. Gov. Printing Off.1986-491-482....11

Internal Revenue Service-"Your Rights as a Taxpayer-Pub. 1(8-88).....11

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

NO._____

ESTATE OF MARION J.CONTI, DECEASED
C.A. NO. 89-1770

Emma M. L. Conti, pro se
Petitioner-Appellant

V.

COMMISSIONER OF INTERNAL REVENUE,ET AL
Respondent-Apellees

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

The petitioner Emma M.L. Conti, respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Third Circuit entered on May 31, 1990 affirming the order and order of dismissal of the U.S. Tax Court entered in the above matter on June 1, 1989.

OPINIONS BELOW

The Court of Appeals entered its Judgement Order affirming the denial of Petitioner's motion on 31 May 1990. A copy of the order is attached as Appendix A.

The Court denied petitioner's petition for rehearing and suggestion for rehearing en banc on 26 June 1990. A copy of Petition and order is attached as Appendix B and C .

The Court of Appeals granted Appellants request for a Stay of Mandate, to file a Petition to the Supreme Court for a Writ of Certiorari. Order of Court approved Stay of Mandate until August 2,1990 was issued July 12,1990. A copy is attached as Appendix D.

The Court of Appeals granted Appellants request for Extension of Stay of Mandate. The Order of the Courts motion to further stay Mandate until August 28,1990 was issued August 17,1990. A copy of Order is attached as Appendix E.

BEST AVAILABLE COPY

JURISDICTION

On August 28,1989, Petitioners filed a notice of Appeal to the United States Court of Appeals for the Third Circuit, from the "Order and Order of Dismissal" by Judge Thomas B. Wells, U.S. Tax Court, on June 1,1989. On May 31,990 the U.S. Court of Appeals for the Third Circuit issued a Judgement Order, of May 24,1990, affirming the decision of the Tax Court."Costs taxed against appellants, under Third Circuit Rule 12(6).

On June 14,1990, Appellants filed a Petition to the Court for a rehearing, to both the panel and rehearing in banc, as provided by FRAB 40. The U.S. Court of Appeals denied Petition for rehearing.

No reason, opinion or determination was given by the Court for the Judgement order of May 24,1990 or refusal for rehearing dated June 26,1990.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article VI, 2nd and 3rd Para., U.S.Constitution

This Constitution shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby.

The Senators and Representatives, and all executive and judicial Officers, both of the United States and of the several States shall be bound by Oath or Affirmation, to support this Constitution.

Amendment 1 ; U.S. Constitution

Congress shall make no law prohibiting freedom of speech; or the right of the people to petition the Government for a redress of grievances.

Amendment V: U.S. Constitution

No person shall be deprived of life, liberty, or property, without due process of law.

Amendment VI: U.S. Constitution

The accused shall enjoy the right to a speedy and public trial, and to have the Assistance

of Counsel for his defence.

Amendment XLV; U.S. Constitution

No State shall make or enforce any law which shall abridge the privileges or immunitiesof citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

MARION J CONTI, DECEASED January, 12,1981
#3008 of 1982
Self-proven Will- March 17,1979, First Codicil-April 17,1980 and Second Codicil of December 12,1980- Letters Testamentary issued February 1990.

John B. Conti, deceased October 26, 1980-
#464 of 1982

Proven Will- February 6,1960 and Codicil- February 16, 1982- Fraudulant Executorship given February 16, 1982, after 16 months of Kangaroo hearings, talking about everything , but the issue.

On April 8,1982, although will of Marion was not probated
J. Conti, Petitioner Emma M. L. Conti filed Estate form 706 and paid a total of $178,896.55, which was an overpayment as I informed them there would be other deductions. An Amended return was filed on August 24,1983. there was an overpayment in the account.

Petitioner did not pay taxes on the Marital share of the John B. Conti, Estate as that money has been illegally held in the Trust account. Marion J. Conti wants the money distributed. Although, John B. Conti's Will states the Court has"no say," Judge Edmund S. Pawelec has put himself and a most corrupt Lawyer in control, Frank R. Donahue, JR. There is several hundred thousand dollars over-payment in income taxes in this trust account. The beneficiaries are never given an accounting of the taxes, etc. It took nine years to get our first payment, which was to be distributed every three months. Now, they did not send a payment due June 29, without any explanation.

All ,deductions, taken on the 706 Estate tax form were proper and backup was given to substantiate the deductions, taken on Marion J. Conti Internal Revenue Form. Your Petitioner always responded immediately to any notice She received from I.R.S. The

task was futile. You could never talk to the person responsible. If, you went to the I.R.S. office they talked in circles and you accomplished nothing.

Thus , when the 90 day letter was received, We filed an appeal to the U.S. tax Court.

Although, the Law of IRS states that all collection stops, when a case is in U.S. Tax Court and Council for IRS had received proof of all deductions. Judge Thomas Wells and Council for IRS James Clancy, Paul Sude, and Stephen Kesselman went in hiding. They told Collection Dept. To harass Emma Conti and placed a levy on Estate Account of Marion J. Conti and stole an amount of $15,425.62, which was not due, (November 23, 1987) from Mellon Bank.

Appellant filed a timely Claim, form 843, for refund of this money. We have not received a reply .

When Judge Wells came out of hiding, Counsel for IRS was changed and Petitioner was harassed again toproduce checks and billings

which IRS Counsel had previously received They made no mention that monies had been taken from the Estate Bank account.

Appellant, was aware that the U.S. Tax Court and I.R.S. were harassing Ms. Conti Even after IRS Counsel Mr. Baker said he was satisfied to allow deductions, except for Robert Bast Esq. ,Who said he was going to be administrator and when he and IRS are finished there would be nothing left.

After , several years of requesting copies of cancelled checks, they decided that I had to bring in the original checks. They had all the Lawyers come in as witnesses and Judge Wells is aware that two Lawyers committed purjury. All the nonsence, waste of Peoples time and money Petitioner realized Judge Thomas Wells was playing games, and was in conspiracy with the Register of Wills, Judge Edmund S. Pawelec and Internal Revenue to extort property.

REASONS FOR GRANTING THE WRIT

The decision of the panel of the U.S. Court of Appeals for the Third Circuit, is contrary to decisions of the United States Court of Appeals in other Circuit Appeals Court, and it is necessary to secure and maintain uniformity of decisions in the various Appeal Courts. On April 11,1983, The U.S.Court of Appeals for the Fifth Circuit-case-702 f.2d 580 No. 81-1548- Daniel R. Rutherford and Linda D. Rutherford, Plaintiffs-Appellants v. U.S. of America, District Director of the Internal Revenue Service. They ruled, that the IRS Agent as a Federal Official, violated taxpayers' constitutional rights to due process by willfully and maliciously assessing them for taxes they did not owe and harassing them into paying those taxes. Assessed twice on the same income and made repeated demands for uselessdocumentation. This is some of the harassment we have experienced. The Court allowed suit for compensatory

damages, for mental anguish and for legal fees incurred in resisting the governments claim as well as punitive damages in retribution for the agent's abuse of authority.

The need for competent counsel is great. This collusion of harassment and taking of property has been endured for over ten years. We hired many lawyers, it was apparent, they were not representing you. Hence, the only way to get truth on the record was to represent yourself, for an honest lawyer could not expose the crime. For this reason, I need the U. S. Supreme Court to assign Counsel,and the words of the United States Constitution will have meaning.

The Judgement Order of the U. S. Court of Appeals for the Third Circuit, is not supported by rules of Law or opinion. For the Judgement Order to afirm the Tax Court decision is against the Rules and Instuctions of Internal Revenue Publication -instruction for Form 706-U.S. Estate Tax Return ,I.R.S.

I.R.S. Income tax Appeal Procedure U.S, Gov Printing Off·1986-49i-482 and Instructions For The U.S. Tax Court and Internal Revenue Service- Your Rights as a Taxpayer- Pub. 1(8-88) Also, Justice delayed is Justice denied. For no reason, it took nine years to have a self-proven Will of Marion J. Conti Probated and Letters testamentary issued by Register of Wills, Ronald R. Donatucci, an Agent for the Secretary of Revenue in the collection of Inheritance Taxes.

For these reasons, and others throughout the Petition , this Court should assign Counsel and grant the Writ of Certiorari

Respectfully submitted,

Emma M.L. Conti, pro se
107 East Moreland Avenue
Philadelphia Pa. 19118

Tele (215 247- 4235

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 89-1770

Estate of Marion J. Conti, Deceased, Elmer Conti, Executor and Emma M.L. Conti, Executor

v.

COMMISSIONER OF INTERNAL REVENUE

Emma M.L. Conti and Elmer Conti, Appellants

On Appeal From a Decision of the United States Tax Court (T.C. No. 21375-85)

Tax Court Judge: Hon. Thomas B. Wells

Submitted Under Third Circuit Rule 12(6)
May 24, 1990

Before: SLOVITER, HUTCHINSON and NYGAARD, CIRCUIT Judges

JUDGEMENT ORDER

After consideration of all contentions raised by appellants, it is

ADJUDGED and ORDERED that the decision of the Tax Court be and is hereby affirmed.

Costs taxed against appellants.

By the Court

D. K. Sloviter (signature)

Circuit Judge

Attest

Sally Mrvos (signature)
Sally Mrvos, Clerk

Dated: May 31,1990

(no reason, opinion or determinatin)

EMMA M.L. CONTI AND ELMER J. CONTI ,
PRO SE
107 East Moreland Avenue
Philadelphia, Pa. 19118

Telephone
(215) 247-4235

June 14,1990

Ms. Sally Mrvos, Esquire
Clerk, Office of the Clerk
United States Court of Appeals for the
Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia Pa. 19106-1790

Re: Estate of Marion J. Conti
Deceased
Conti v. Commissioner-IRS
C.A. No. 89-1770

Dear Ms. Mrvos;

Enclosed are the original and 14 copies of the PETITION FOR REHEARING of the above case, as provided by FRAB 40, from the Judgement issued May 31,1990 by Circuit Judge Sloviter- U.S. Court of Appeals.

As indicated in the certificate of service, appellee has been served by mail with a copy of the petition for rehearing.

Please submit our Petition for Rehearing,

to both panel and rehearing in banc.

Sincerely yours,

EMMA M. L. CONTI (signature)

EMMA M.L. CONTI, PRO SE

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ESTATE OF MARION J. CONTI, DEC.: EMMA M. L. CONTI, EXECUTOR, AND: ELMER J. CONTI, EXECUTOR, PRO SE:	No. 89-1770
Appellant	
v.	
COMMISSIONER OF INTERNAL REVENUE:	
Appellee	

PETITION FOR REHEARING (FRAP 40)

OF THE ABOVE CASE, FROM ORDER DATED MAY 31, 1990-

Comes now, your petitioners, Emma M.L. Conti and Elmer J. Conti, respectfully requests a rehearing of the above case. The

Judicial Order of May 31, 1990, by the Panel denies Appellants their Constitutional Rights and the Laws of the I.R.S., and the Rights of a Taxpayer.

1. The Panel did not make a statement of the Law. Proof that there is no law that could substantiate this Order, for it protects unlawful and unethical practice of Lawyers, Register of Wills (an agent for the U. S. Treasury), the Orphans Court Administrator, and Agents of Appellee (Internal Revenue).

2. The Panel did not back their order with an Opinion and determination. An Order or Decree without an opinion or reason for the decision isn't fair. A judge has a reason for making a decision, if He can't put it in writing, it must be wrong. When the Judge does not back his order with an opinion it isn't fair, because the petitioner is without the specific reasoning that he must disprove. Also, for a Judge not to give an opinion, is the same as the witness who takes the Fifth Amendment.

3. The decision of the Tax Court cannot be affirmed correct. The taxpayer is entitled to deductions. These are allowable deductions and proper proof was given. Judge Wells conspired that the Collection Department of the IRS, (under orders from IRS Council), illegally confiscated monies from the Estate account of Marion J. Conti, while the case was in the U.S. Tax Court, Judge Wells presiding. The Law states, if it is in the tax Court it is out of collection. Also, this money was not due. Copy of Amended form #706, was timely filed and backup for deductions were given to IRS.

4. Although, Marion J. Conti's Will was self-proven and witnesses testified that she had signed of her own free will, and was of sound mind, it took nine years to have her Will and Codicils probated. A conspiracy of fraud and corruption with the Register of Wills, corrupt Lawyers and Agents of Internal Revenue to steal property, terrorize and harass.

" A Judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he acts in his judicialcapacity"- Supreme Court Justice Potter Stewart. The purpose of the court is to punish crime, not to praise it.

5. Also, since "Letters Testamentary" were not received until February 1990, there are many deductions to be taken from the Estate tax form #706, for closing expenses.

6. I.R.S. "Rights of the taxpayer" states that you have a right to plan your business so that the least tax is due under the law. YOU ARE LIABLE ONLY FOR THE CORRECT AMOUNT OF TAX.

7. I have been denied my right to be represented by Counsel. An honest lawyer is not permitted to expose corruption of the Judges, Register of Wills. He has to earn a living. I don't need any more corrupt ones, who are not representing you. " Of all the rights that a person has, the right to be represented by Counsel is by far the most pervasive, for it

affects his ability to assert any other rights he may have.", spoken by Judge Walter V. Schaefer, of the Supreme Court of Ill....

8. Also,panels order , states that- "Costs taxed against appellants". The Court rules say that appellants will pay costs if the case is frivolous ! This is NOT FRIVOLOUS. This is an organized ongoing RACKETEERING MOB . Is it possible the panel did not review all the writings in the original Appendix ? The illegal activities, planned extortion of property for ten years.

9. The most dastardly crimes of corrupt Lawyers and Register of Wills (Agent for the Treasury) are protected by Estate Tax Specialist Dept. When Janis Brodie (Attorney IRS) was told that Alda Conti Girardi's lawyer Stephen Sheller had told her (Alda) that he was a friend of Register of Wills Ronald Donatucci and that if she gave him $100,000.00, he would divide it with the Register and She would be assured to become executor. Ms. Brodie

was not shocked at this criminal activity, She left the room. A short time later, I turned around to face two Federal Police Officers. They were called to escort me out of the building. They did not know why. Ms. Brodie protects crime.

10. Marion J. Conti died two and a half months after her husband, John B. Conti. This case also concerns taxes due on the Marital share, which has been illegally held in the trust account, as Marion J. Conti wanted the marital share to be taken out of the trust and given outright to the heirs. The John B. Conti Trust is still illegally controlled by Judge Edmund S. Pawelec, against the law, and in opposition to the Trust set up by John B. Conti. There is an overpayment of c.$200,000.00 paid to Internal Revenue in this account. Stock is illegally sold, churning the account, deceptive accounting practices. All done at a great loss to the Trust, and greater payments to the IRS and other taxes, the Meridian

Bank and dishonest Lawyer (unlawfully).

11. I express a belief, based on a studied judgement, that the panel decision is contrary to decisions of the United States Court of Appeals in other Circuit Appeals Court, and that consideration by the full court is necessary to secure and maintain uniformity of decisions in the various Appeal Courts. The Panel's decision is contrary to the decision, of April 11, 1983, of The U.S.Court of Appeals for the Fifth Circuit. They ruled, that an IRS agent as a Federal Official, acting under color of federal law when he violated taxpayers' constitutional rights to due process by willfully and maliciously assessing them for taxes they did not owe and harrassing them into paying those taxes. The Court allowed suit for compensatory damages for mental anguish and for the legal fees incurred in resisting the government's claim as well as punitive damages in retribution for the

agent's abuse of authority.

12. From the first hearing at the U.S. Tax Court hearing, before Judge Wells, which was continued in the Judges Chambers at the request of IRS Counsel and no consideration of Appellant, Judge Wells was willing to become part of this collusion to harass and extort property, as "He was to be Judge for the next fifteen years and wants to know what happens to this money ". (Speaking to IRS Counsel Paul Sude.)

13. For these reasons, and the many others discribed in Appellants brief and reply brief, and spread through-out the Original and Supplemental Appendix, We the Petitioners pray this Honorable Court will grant this Petition for a Rehearing.

Respectfully submitted,

EMMA M. L. CONTI, PRO SE
ELMER J. CONTI, PRO SE
107 East Moreland Avenue
Philadelphia, Pa. 19118

(215) 247 4235

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 89-1770

ESTATE OF MARION J. CONTI, DECEASED

v.

COMMISSIONER OF INTERNAL REVENUE

Emma M.L. Conti and Elmer Conti,
Appellants

SUR PETITION FOR REHEARING

Present: HIGGINBOTHAM, Chief Judge, SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN AND NYGAARD, Circuit Judges

The petition for rehearing filed by Appellants Emma M.L. Conti and Elmer Conti in the above- entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of thecircuit in regular

active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

Dolores K. Sloviter
Circuit Judge

Dated: JUN 26 1990

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 89-1770

Emma M.L. Conti and Elmer Conti,
Appellants

vs.

Commissioner IRS

Pursuant to Rule 41(b) of the Federal Rules of Appellate Procedure, it is O R D E R E D that issuance of the certified judgement in lieu of formal mandate in the above cause be, and it is hereby stayed until August 2, 1990

SIGNED DOLORES K. SLOVITER
Circuit Judge

Dated: JUL 12 1990

OFFICE OF THE CLERK

United States Court of Appeals
for the Third Circuit
21400 United States Courthouse
INDEPENDENCE MALL WEST
601 Market Street
Philadelphia 19106

Sally Mrvos
Clerk

Direct Dial
597-8465

July 12, 1990

Ms. Emma M. L. Conti
Mr. Elmer J. Conti
107 East Moreland Avenue
Phila., Pa 19118

Re: Conti vs. Commissioner Internal Revenue No. 89-1770

Dear Ms. and Mr. Conti:

Enclosed herewith is a conformed copy of order filed today staying the issuance of the mandate to August 2, 1990, in the above-entitled case.

If during the period of the stay we receive notification from the Clerk of the Supreme Court that a petition for writ of certiorari has been filed, the stay shall continue until final disposition by the Supreme Court.

Very truly yours,

By: M. Elizabeth Ferguson
Chief Deputy Clerk

bj
enc

cc: (A.B.Durney, Esq.
(D.D.Coles Esq.
(G.A.Allen, Esq.

A- E1

Appellant, Emma M.L. Conti mailed a request for Extension of Stay of the Mandate on August 1,1990.- Reply dated August 17,1990

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 89-1770

Re: EMMA M.L. CONTI and ELMER CONTI, Appellant vs. COMMISSIONER IRS

Present: SLOVITER, Circuit Judge

1. Appellant's Request For Extension of Stay of the Mandate, which the Court may wish to treat as a Motion to Recall the Mandate and Stay the Mandate.

No Answer has been received.

Deputy Clerk- Direct Dial 597-8465

ORDER

The foregoing Motion to recall the Mandate is Granted, and the Mandate is futher STAYED until August 28, 1990.

By the Court

D. K. SLOVITER (signature)
Circuit Judge

Dated: August 17, 1990